1489

SUPREME COURT OF THE UNITED STATES.

No. 50.

THE COMMERCIAL MUTUAL MARINE INSURANCE COMPANY, APP'T,

VS.

THE UNION MUTUAL INSURANCE COMPANY, OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

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In Equity.

THE UNION MUTUAL INSURANCE COMPANY
versus
THE COMMERCIAL MUTUAL MARINE INS. CO.

The bill of complaint in this cause was filed in the clerk's office, on the 22d day of May, A. D. 1854, and was in the words following, to wit:

To the Judges of the Circuit Court of the United States for the District of Massachusetts:

The Union Mutual Insurance Company, a corporation duly established by the laws of the State of New York, doing business at the city of New York, in the State of New York, bring this their bill of complaint against the Commercial Mutual Marine Insurance Company, a corporation duly established by the laws of the Commonwealth of Massachusetts, doing business at the city of Boston, in said Commonwealth.

And thereupon your orators complain and say, that in and by their charter and by the laws of the State of New York, they were, on the second day of November, eighteen hundred and fifty-three, and ever since have been, authorized and empowered to make insurance among other things against loss by the perils of the seas and against loss by fire; that your orators, on the said second day of November, underwrote and caused one D. McKay to be insured for whom it might concern, payable in the event of loss to the said McKay, on one-eighth of the good ship *Great Republic*—the said ship having been valued at one hundred and seventy-five thousand dollars—the sum of twenty-two thousand dollars, for the term of one year at and from the second day of November, eighteen hundred and fifty-three, at noon, until the second day of November, eighteen hundred and fifty-four, at noon, against loss from sundry designated risks, and especially from loss from the perils of the seas, and from loss by fire, as will more fully appear from a copy hereto annexed and made part of this bill of the policy issued by your orators to the said D. McKay.

Your orators further say, that thereafter the aforesaid insurance so made by your orators upon the Great Republic, and on the night of the twenty-sixth of December, eighteen hundred and fifty-three, the said ship was totally destroyed and lost by fire, one of the perils insured against; that your orators thereupon became liable to pay, and thereafter such loss did pay, to the said D. McKay the

full sum of twenty-two thousand dollars, the amount so as aforesaid by your orators underwritten.

Your orators further say, that after they had insured the said McKay as aforesaid, and before the loss aforesaid of the said ship, and before the commencement of the fire by which its destruction was produced, your orators requested and authorized Charles W. Storey, of Boston aforesaid, insurance broker, to cause and procure your orators to be re-insured in the sum of ten thousand dollars upon the said Great Republic, for the term of six months, against all and singular the risks by your orators theretofore assumed, and especially against loss from the perils of the seas and from fire.

Your orators further say, that the said Charles W. Storey, as the agent of your orators, in that behalf duly authorized and in their name and behalf, on Saturday, the twenty-fourth day of December, eighteen hundred and fifty-three, made application to the said defendants for the re-insurance by them of your orators upon the said Great Republic, in and for the sum of ten thousand dollars, for the term of six months from the twenty-fourth of December aforesaid, against such risks as your orators had assumed, and especially against loss from the perils of the seas and against loss from fire; that the said application so made by the said Storey was made at the office and usual place of business of the said Commercial Mutual Marine Insurance Company in Boston; that it was so made in the first instance to the secretary of the defendants, and immediately thereafter, and on the day last aforesaid, to George H. Folger, the president of the defendants, who was duly authorized to receive and act thereupon for the defendants.

Your orators further say, that upon the making of the said application the said George H. Folger, after consulting and advising with some person then present, whose name is to your orators unknown, replied to the said Storey, that the defendants would re-insure your orators in the sum of ten thousand dollars upon the said Great Republic, and would assume the risks proposed for the term of one year, at and for a premium of six per cent. upon the sum to be underwritten; that they would insure against the said risks for the term of six months at and for a premium of three and one-half of one per cent. upon the sum to be insured.

Your orators further say, that the said Storey, immediately thereafter the said application, communicated to your orators the terms upon which the said defendants would re-insure your orators upon the said Great Republic.

Your orators further say, that on the said twenty-fourth of December, your orators, upon being advised by the said Storey as aforesaid, directed, authorized, and requested the said Storey, in the name and in behalf of your orators, to accept the terms aforesaid, for six months, and to procure for your orators a re-insurance in accordance therewith from 24th December aforesaid.

Your orators further say, that the said Storey, as agent and in

behalf of your orators, on Monday, the twenty-sixth day of the said December, at or about eleven o'clock before noon, at the place of business of the said defendants in Boston, and before any loss or damage had occurred to the said Great Republic, notified the said Folger that your orators had accepted the proposition of the defendants to re-insure your orators for the term of six months from the twenty-fourth of December aforesaid, at noon.

Your orators further say, that on the said twenty-sixth of December, and before any loss or damage had occurred to said ship, the above-named Storey, in behalf of your orators, embodied in a paper, partly printed and partly written, the terms of the contract of re-insurance so as aforesaid, on the said twenty-fourth of December, in answer to the aforesaid application proposed to your orators by the said defendants, and so as aforesaid accepted on the morning of the twenty-sixth of December.

Your orators further say, that the said paper was examined, approved, and retained by the said Folger, he in this behalf acting for the defendants, and by him was, in the name of the defendants, assented to, and thereupon a contract of re-insurance by and between the defendants and your orators was complete and concluded, upon the terms in said paper contained, by force whereof the defendants became and were liable and agreed to and with your orators to pay to them the sum of ten thousand dollars, in the event that the said ship Great Republic should be lost or damaged within six months from and after noon of the said twenty-fourth of December, by the perils of the seas or by fire.

Your orators further say, that the said Folger, in behalf of the defendants, and in their name and behalf, agreed with the said Storey, he acting for your orators, that a policy should be prepared and executed by the said defendants to your orators, at the early convenience of the defendants, and delivered to your orators, containing, with other usual and accustomary clauses, the terms of the contract of re-insurance so as aforesaid concluded by and between your orators and the defendants, and so as aforesaid embodied and set forth in the paper aforesaid.

Your orators further say, that the said Storey, on the twenty-sixth of December aforesaid, was authorized, ready, and willing, in behalf of your orators, to pay to the defendants, or secure to their satisfaction at their election, the premium so as aforesaid agreed upon for the said re-insurance; but the same was not then paid, because the defendants were accustomed not to receive the premiums by them required in their contracts of insurance until the preparation and delivery of the policies by them agreed to be issued.

Your orators further say, that the said Storey, on the said twenty-sixth of December, immediately upon the conclusion of the aforesaid contract of re-insurance, advised your orators of its completion.

Your orators further say, that the said Storey, on Tuesday, the twenty-seventh of December aforesaid, notified the defendants that

the said ship had been destroyed by fire and was totally lost, and at the same time asked Edmund B. Whitney, secretary at the time of the defendants, in the presence and hearing of the said Folger, at the office of the said defendants, if the policy had been prepared for your orators; to which the said Whitney, in the hearing of the said Folger, said no, assigning no reason for the delay, or intimating any refusal to execute such policy.

Your orators further say, that the said Story, on Wednesday, the twenty-eighth of December, called a second time at the office of the defendants and asked for the said policy, to which the said Folger replied, he was in doubt whether the contract was complete and obligatory, as it was made on a day regarded as Christmas day; but he, the said Folger, had not made up his mind about it and did not want to talk on the subject then.

Your orators further say, that one F. S. Lathrop, on the thirtieth of January, eighteen hundred and fifty-four, in behalf of your orators, made a draft upon the defendants for the sum of nine thousand six hundred and fifty dollars, the amount of said re-insurance, less the premium, payable at sight, to John S. Tappan, your orators' vice president, which draft was thereafter, and on the first of February, eighteen hundred and fifty-four, presented to the defendants, which they refused to pay or accept.

Your orators further say, that the said Storey, in behalf and in the name of your orators, in that behalf duly authorized, on the twenty-sixth of April, eighteen hundred and fifty-four, at the office of the defendants, made demand upon the aforesaid Folger for the execution and delivery of the policy so as aforesaid by the said defendants theretofore agreed to be by them executed and to your orators to be delivered, and at the same time tendered to the said defendants the sum of three hundred and sixty dollars as and for premium, interest, and cost of policy, with which request the said Folger, in the name of the said defendants and in their behalf, refused to comply.

Your orators further say, they have applied to the defendants for a copy of the aforesaid paper so left with them on the twenty-sixth of December, which they refused to furnish.

And your orators well hoped that the defendants would have complied with the reasonable requests of your orators.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, and according to the best and utmost of their knowledge, remembrance, information, and belief full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written, they are required to answer, that is to say:

1. Whether, upon your information and belief, your orators, before the said twenty-fourth of December, caused D. McKay to be insured upon the ship Great Republic, upon the terms stated in a paper

hereto annexed, purporting to be a copy of a policy made by the complainants?

2. Whether, upon your information and belief, the said ship was destroyed and totally lost by fire during the night of December twenty-sixth, eighteen hundred and fifty-three?

3. Whether, upon your information and belief, the complainants have paid us and for a loss upon the said ship the entire sum by them underwritten upon said ship?

4. Whether Charles W. Storey, on the aforesaid twenty-fourth of December, applied at your place of business to you, in behalf of the complainants, to re-insure them in the sum of ten thousand dollars upon the Great Republic?

5. Whether your president, George H. Folger, on the said twenty-fourth of December, stated to the said Storey the terms upon which you would re-insure the complainants the sum of ten thousand dollars on the said ship?

6. Whether, on Monday, the said twenty-sixth day of December, during the forenoon, the said Storey, at your place of business, said to your president that the complainants had accepted the terms proposed by your president on said twenty-fourth of December, for a re-insurance by you for the complainants in the sum of ten thousand dollars, upon the ship Great Republic?

7. Whether the said Storey, on the said twenty-sixth of December, left with your president at your office a paper or memorandum containing the terms of a re-insurance by you for the complainants in the sum of ten thousand dollars, upon the said Great Republic?

8. Whether the said paper was interlined in any respect or word by your president, in the presence and with the consent of the said Charles W. Storey?

9. Whether your president, on the said twenty-sixth of December, assented to the terms and provisions in said paper contained?

10. Whether, upon your information and belief, the said Storey, on the said twenty-sixth of December, advised the complainants that he had procured a re-insurance for them upon the aforesaid ship at your office, upon the terms which had been proposed by you on the twenty-fourth of December?

11. Whether, on the twenty-seventh day of December, eighteen hundred and fifty-three, the fact that the aforesaid Great Republic had been destroyed by fire was the subject of conversation at your place of business between your president and the said Storey?

12. Whether, on said twenty-seventh of December, the said Storey inquired of your secretary or clerk if a policy had been prepared for the complainants?

13. Whether any reply was made to said inquiry; if so, what reply was made and by whom?

14. Whether the said Storey was at that time informed that the

defendants would not execute or deliver a policy to the use and for the complainants?

15. Whether it is your usual or frequent practice, when you make a contract of insurance and after such contract has been entered into, to require some time for the preparation and execution of the policy before it is ready for delivery?

16. Whether it is usual or frequent, at your office, to delay the payment of the premium until the policy is prepared and ready for delivery?

17. Whether the complainants, by the said Storey, at any time tendered any sum of money as and for a premium upon a re-insurance by you, for the complainants upon the above-named ship, and thereupon demanded a policy; if so, how much was tendered and when was it made?

And your orators pray that the defendants may discover and produce the original paper or memorandum so as aforesaid made by the said Storey, and dated twenty-fourth of December, eighteen hundred and fifty-three, which was so as aforesaid left with their President at their place of business, on the aforesaid twenty-sixth of December.

And that the said agreement of the defendants to execute and deliver to your orators a policy of re-insurance, according to the terms of the aforesaid paper, and in accordance with the defendants' contract of insurance as aforesaid, may be specifically performed, your orators hereby offering to perform their undertakings in the premises.

And that the said defendants may be deemed to pay to your orators the sum of ten thousand dollars, the sum so as aforesaid by them re-insured to your orators, with interest thereon; and that your orators shall have such other and further relief as the case may require and as shall seem meet to the Court, and as shall be agreeable to equity and good conscience.

And your orators pray this honorable Court to issue a writ of *subpœna* in due form of law, according to the rules of this Court, to be directed to the Commercial Mutual Marine Insurance Company—a corporation, by the law of Massachusetts, at Boston—commanding them on a certain day and under a certain penalty to be and appear before this honorable Court, and to stand to, abide, and perform such order and decree therein as to this Court shall seem meet, and as shall be agreeable to equity and good conscience.

THE UNION MUTUAL INSURANCE
COMPANY OF NEW YORK.
By C. B. GOODRICH,
Their Attorney.

C. B. GOODRICH, *Counsel.*

Note. The defendants are requested to answer each and every interrogatory, from No. 1 to No. 17, inclusive.

Copy.

By the Union Mutual Insurance Company.

Office No. 58 Wall street, New York.

Vessel. No. 7705. $7550 50.

D. McKay, on account of whom it may concern.

In case of loss, to be paid to him. Do make insurance, and cause to be insured, at and from the second day of November, 1853, at noon, until the second day of November, 1854, at noon; if on a passage on the expiration of the term, with liberty to the assured to renew the policy for one, two, or three months at the same rate of premium, if application be made to the company on or before the expiration of the first term. The risk, however, is to terminate at any port at which she may first arrive during the said extended time, on her being moored therein twenty-four hours in good safety; a pro rata premium to be returned for each entire month not entered upon of the extended time, no loss being claimed. Warranted not to use the West India islands during the months of August and September, nor ports on the continent of Europe north of Havre between the first day of November and the first day of March; and also warranted not to use ports and places in Texas, except Galveston, nor foreign ports and places in the Gulf of Mexico, nor the mouth of Columbia river, nor ports over Ocrocok bar, nor ports in the British provinces, during the period insured. Each passage subject to separate average. Warranted not to abandon in case of blockade, and free from any expense in consequence thereof; and in case of capture or detention, not to abandon under ninety days after notice of the same is delivered to the company; also warranted not to load more than her tonnage in iron, lead, or marble, nor more than half her tonnage in grain in bulk, or any one passage, on one-eighth upon the body, tackle, apparel, and other furniture, of the good ship called the Great Republic, whereof *Sum insured,* is master for this present voyage, or who- $22,000. ever else shall go for master in the said vessel, or by whatever other name or names the said vessel or the master thereof is or shall be named or called.

And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at any, port or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said vessel, tackle, &c., hereby insured, are valued at one hundred and seventy-five thousand dollars, without any further account to be given by the assured to the assurers, or any of them, for the same. Touching the adventures and perils which the said Union Mutual Insurance Company is contented to bear, and takes upon itself in this voyage,

they are of the *seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners*, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said vessel, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said vessel, or any part thereof, without prejudice to this insurance; to the charges whereof, the said insurance company will contribute according to the rate and quantity of the sum herein insured; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; having been paid the consideration for this insurance, by the assured or assigns, at and after the rate of six per cent.

And in case of loss, such loss to be paid in thirty days after proof of interest in the said, (the amount of the note given for the premium, if unpaid, being first deducted,) but no partial loss or particular average shall in any case be paid unless amounting to *five per cent.* Provided always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid prior in date to this policy, then the said Union Mutual Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Union Mutual Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in date to this policy, the said Union Mutual Insurance Company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. It is also agreed, that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. And it is further agreed, that in case a total loss shall be claimed for or on account of any damage or charge to the said vessel, the only basis of ascertaining her value shall be her valuation in this policy; and if not valued herein, then her actual value at the time of the inception of this risk at the port to which she then belonged. And lastly, it is agreed, that if the above vessel,

Premium,	$1320 00
Policy,	1 25
	$1321 25

upon a regular survey, should thereby be declared unseaworthy, by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this policy.

In witness whereof, the president or vice president of the said Union Mutual Insurance Company hath hereunto subscribed his name and the sum insured, and caused the same to be attested by their secretary, in New York, the second day of November, one thousand eight hundred and fifty-three.

If the voyage aforesaid shall have been begun, and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, *one-half per cent.* upon the sum insured is to be retained by the assurers.

$22,000—Twenty-two thousand dollars.

(Signed,) F. S. LATHROP,
President.

(Signed,) FERDINAND STAGG,
Secretary.

And on the 6th day of October, A. D. 1854, the respondents filed their answer to the said bill in the words following, to wit:

To the Judges of the Circuit Court of the United States for the District of Massachusetts:

The answer of the Commercial Mutual Marine Insurance Company to the bill of complaint of the Union Mutual Insurance Company.

This defendant, reserving all right of exception to said bill of complaint, for answer to so much thereof as it is advised it is material and proper to make answer, saith:

That on or about the twenty-fourth day of December, eighteen hundred and fifty-three, Charles W. Storey called at the office of this defendant, in Boston, and presented the application for insurance, a true copy of which is annexed hereto, and desired to obtain re-insurance upon the ship Great Republic for the amount of ten thousand dollars; that at that time, the figure "3" upon said application stood alone, and the President of this defendant declined to take the risk at 3 per cent. for six months, and informed Mr. Storey that the risk was worth 3 1-2 per cent. for six months, and at that rate he was willing to take the risk; that Mr. Storey then said he was not authorized to give so much, and could not do so, and left this defendant's office, without any expressed intention of returning, and carried away with him the said application.

That on the twenty-sixth day of said December, being Monday, the office of this defendant was not open for business; that the twenty-fifth day of December, being Sunday, the said twenty-sixth day of December was generally observed as "Christmas day" and

as a holiday, and the banks, insurance offices, offices of brokers, and the stores of merchants were closed, and no business was transacted on that day, and the office of this defendant was closed for business on that day, and neither the secretary of this defendant, nor any of its clerks, nor any of its directors, were at its office; but its president, George H. Folger, went to its office for a few minutes, but not on the business of this defendant, and while he was there, Mr. Storey again called and again presented the application for re-insurance aforesaid, and said he was willing to give 3 1-2 per cent. for six months for said re-insurance, and the figure "1-2" was then added to the figure "3" by him; that said Folger assented to the terms in said paper contained, but informed said Storey that no business was done at this defendant's office on that day, and that the next day he would attend to it, and said Folger thereupon took said paper from said Storey, and retained the same in the office of this defendant.

This defendant denies that any contract for re-insurance was entered into between this defendant and the said complainant.

This defendant saith, that by the custom of business in its office, any person seeking insurance therein makes application therefor in writing, or by a printed form, signed by the applicant, similar to the application aforesaid, a copy whereof is annexed; if the president is willing to take the risk without consultation with the directors, he says so, and the premium is agreed upon and placed upon the application, and the same is then placed upon the file of applications for the day, and the policy is made out in its order by the clerk upon the succeeding day; if the applicant is desirous that the risk commence immediately, and the president assents thereto, the president subscribes the application in connection with the word "binding," and no risk is understood to have commenced unless the application has been thus subscribed by the president, or unless a policy has been made out and subscribed by the proper officers of this defendant; and such applications not so subscribed are only memoranda of the description of the subject matter, the voyage, the risks, the premium, and other matters to be inserted in the policy of insurance from them to be made up.

And this defendant saith, that the application aforesaid was not so subscribed by the complainant or any person acting in its behalf, nor by the president of this defendant nor any person acting in its behalf, and that no entry or memorandum of any kind in regard thereto was made upon any or the books of this defendant, and that no writing of any kind in regard to said application for re-insurance was made except what is contained upon the paper aforesaid, a copy whereof is hereto annexed.

And this defendant saith, that no valid agreement for insurance can lawfully be made except the same be in writing, signed by the party to be charged thereby.

And this defendant saith, that by the laws of Massachusetts, under

which this defendant is incorporated, it is provided and required that all policies of insurance made by incorporated insurance companies shall be subscribed by the president and countersigned by the secretary thereof.

And this defendant saith, that said Storey, on the twenty-eighth day of said December, called at this defendant's office and asked for the policy, and was informed that none had been made, and on inquiring wherefore the same had not been made, was informed by its president that this defendant did not consider the insurance to have been completed, and that it was not bound to execute and deliver a policy, and that, among other reasons, one was that the twenty-sixth day of the month was celebrated as Christmas day, and he was in doubt whether any business done on that day would be legal, or words to that effect; and he also stated that he did not wait to converse upon the subject, as he had not made up his mind as to what course this defendant ought to take.

And this defendant saith, that a draft drawn by F. S. Lathrop upon the Commercial Insurance Company, but in whose favor this defendant cannot state, was presented at the office of this defendant for acceptance on or about February 1st, 1854, said draft being for the sum of nine thousand six hundred and fifty dollars, as this defendant believes, and the same was refused acceptance by this defendant.

And this defendant saith, that the said Storey did, on the twenty-sixth day of April, or near that day, tender to this defendant or its officer a sum of money, alleging that it amounted to three hundred and fifty dollars, and demanded a policy of insurance upon the ship Great Republic, which was refused by this defendant.

And to the interrogatories annexed to said bill of complaint to which this defendant is required to make answer, it answers:

To the first: That it believes the complainant did, before the 24th day of December, cause D. McKay to be insured upon the ship Great Republic upon the terms stated in the paper annexed to said bill, and purporting to be a true copy, but desires a reference to the original paper for greater certainty.

To the second: That it believes said ship was destroyed by fire as inquired of.

To the third: That it believes the complainants have paid the amount by them underwritten.

To the fourth: That Charles W. Storey did, on the said twenty-fourth day of December, apply at this defendant's office to know if this defendant would re-insure the complainants the sum of ten thousand dollars on said ship, at 3 per cent. for six months, and was informed that this defendant would not.

To the fifth: That said Folger did inform said Storey that he was willing to take said risk at 3 1-2 per cent., but said Storey replied that he was not authorized to give more than 3 per cent. for six months and withdrew the application; but said Folger did

not make any proposition for insurance which was to remain open for acceptance of said Storey.

To the sixth: That said Storey, on Monday, the twenty-sixth day of December, came to this defendant's office, the same not being open for business, but the president being there, and said he was then authorized or willing to give 3 1-2 per cent. for said re-insurance.

To the seventh: That the said Storey did leave with its president the paper or memorandum, a copy of which is annexed, and he left no other paper.

To the eighth: That said paper was altered by the said Storey, in the office of this defendant and in the presence of its president, by adding the figures "1-2" to the figure "3" originally there, and no other alteration was made.

To the ninth: That its president did assent to the terms and provisions in said paper, as the terms and provisions of a re-insurance to be completed and executed by this defendant, by the making and execution of a policy in due form according to the requisitions of the laws of Massachusetts and the by-laws of this defendant, but they were not assented to as a present insurance.

To the tenth: That this defendant has no knowledge, information, or belief in regard to the matter inquired of in this interrogatory.

To the eleventh: That conversation did take place between its president and said Storey at its place of business in regard to the loss of said ship.

To the twelfth: That said Storey did inquire of its clerk if a policy had been prepared.

To the thirteenth: That Mr. N. G. Cleaves, the clerk of this defendant, replied that it had not.

To the fourteenth: That the said Storey did not ask for a policy on that day, except as above stated, of the clerk, and he was not on that day informed that no policy would be made.

To the fifteenth: That it is the usual and frequent custom of this defendant's office to receive written or printed applications for insurance, which contain the subject matter, the voyage, the risks, the premium, and by whom insurance is proposed and for whom, which, if satisfactory, are assented to by its president and handed to the clerk, as the basis for filling up a blank policy to be executed in proper form according to law; that upon the execution of the policy and the making of the premium note agreed on, the insurance is complete; but that until the filling up and execution of the policy by the proper officers, no insurance is complete or binding upon this defendant; that when similar agreements have been made as to the terms of insurance, and when time is required for filling up the policies, if the applicant desires the insurance to commence immediately, the application is signed by this defendant's president, and the insurance is considered to take effect immediately; and this defendant says it is usual and frequent, after such a contract

of insurance as the last described has been entered into, to take time to fill up and execute the policy.

To the sixteenth: That it is usual and frequent so to do.

To the seventeenth: That said Storey did tender, as this defendant believes, the sum of three hundred and fifty dollars, on the twenty-sixth day of April, 1854, and demanded a policy of insurance.

Whereupon this defendant respectfully prays to be hence dismissed and allowed its costs.

HARVEY JEWELL,
Solicitor.

GEORGE H. FOLGER,
President.
[L. S.]

EDMUND B. WHITNEY,
Secretary.

Copy of application referred to.

Re-insurance is wanted by the Union Mutual Insurance Company of New York, for $10,000 on ship Great Republic, from December 24th, 1853, at noon, for six months ensuing.

This policy is to be subject to such risks, valuation, and condition, including risk of premium note, as are or may be taken by the said Union Mutual Insurance Company, and payment of loss to be made at same time.

Binding. *President.*

New York, Dec. 24, 1854.

And on the 9th day of said October, the following replication was filed by consent, as if filed in proper time, to wit:

UNITED STATES OF AMERICA,
First Circuit, District of Massachusetts.

October Term, 1854.

UNION MUTUAL INSURANCE COMPANY
vs.
THE COMMERCIAL MUTUAL MARINE INSURANCE COMPANY.

The replication of the complainant to the answer of the defendant.

The complainants, saving and reserving unto themselves any and all manner of advantage of exception to the manifold insufficiencies of the said answer of replication, thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants is uncertain, untrue, and insufficient to be replied to by these

complainants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these complainants are and will be ready to aver and prove as this honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

UNION MUTUAL INSURANCE COMPANY.
By C. B. GOODRICH,
Their Solicitor.

I consent that the complainants may at this time file their replication to the answer of the defendants as of the time when it should within the rules have been filed, and with the same effect.

H. JEWELL,
Solicitor for Respondent.

April 10, 1855.

This cause was thence continued from term to term until this present term, when, to wit, on the 14th day of November, A. D. 1855, the same came on to be heard on the bill and answer and proofs in the case, and was argued by counsel; and it appearing to the Court that the complainants, through their agent, made a proposal in writing for insurance which contained all the necessary terms of a valid contract for a policy, and that the defendants accepted this proposal; that this acceptance made a legal contract between the parties which it is the duty of the Court to order to be specifically performed; that, as it is admitted that the complainants would have a good cause of action at law upon a policy, if issued in pursuance of the contract, there should be decreed to them in this suit what they would be entitled to recover if a policy were issued, and that which was agreed to be done were actually done;—thereupon, it is ordered, adjudged, and decreed, that the said agreement so entered into between the said complainants and the said defendants set forth in the bill of complaint, and proven in this cause, be specifically performed. It is further ordered, adjuged, and decreed, that the complainants recover of the said defendants the sum of eight thousand and seven hundred and two dollars and fifty-three cents, as and for their damage in this behalf sustained—a deduction having been first made from the sum agreed to be insured for premium and salvage, and also, the sum of two hundred and four dollars and twenty-four cents for their cost in this behalf sustained.

Whereupon, the said Commercial Mutual Marine Insurance Co'y then and there claimed an appeal to the Supreme Court of the United States to be holden at Washington, on the first Monday of December next, and gave good and sufficient security to prosecute their appeal with effect, and to answer all damages and costs if they shall fail to make good their appeal, which security was approved by the Court, and the said appeal was allowed accordingly.

UNITED STATES OF AMERICA,
Mass. Dist., ss:

I, Henry W. Fuller, clerk of the Circuit Court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of the Union Mutual Insurance Company, in equity, versus the Commercial Mut. Mar. Ins. Company, in said Court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Boston, in said district, [L. S.] this first day of December, anno Domini one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

H. W. FULLER, *Clerk.*

UNITED STATES OF AMERICA.

The Circuit Court of the United States, within and for the Massachusetts district.

Massachusetts District, ss:

To any commissioner of the Circuit Court of the United States, within and for the district of Massachusetts, residing at Boston:

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Charles W. Storey, of Boston, counsellor at law, a witness to be examined on behalf of the complainants, and to be used in a certain cause now pending in said Court, wherein the Union Mutual Insurance Company of New York is plaintiff, vs. the Commercial Mutual Marine Insurance Company, defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforssaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the Circuit Court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said Circuit Court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this thirtieth day of April, in the year of our Lord one thousand eight hundred and fifty-five.

H. W. FULLER, *Clerk.*

N. B. You shall not, except by consent of the parties in writing,

permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent, whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

Depositions to be taken on paper of like size with the commission.

UNITED STATES OF AMERICA,
First Circuit, District of Massachusetts.

Circuit Court. October term, 1854.

UNION MUTUAL INSURANCE COMPANY OF NEW YORK
vs.
THE COMMERCIAL MUTUAL MARINE INSURANCE COMPANY, of Boston, Massachusetts.

Equity.

Interrogatories to be proposed to Charles W. Storey, of Boston, counsellor at law, by and in behalf of the complainants.

1. What is your name, age, and occupation, and where do you reside, and where do you transact your business?

2. Whether or not the complainants have at any time employed you as their agent to procure reinsurance for them and in their behalf upon risks previously taken by them?

Objected to.

3. Whether or not you have been employed by parties other than the complainants to procure insurance? If you answer affirmatively, state how long and how extensively you have been so employed, and where.

Objected to.

4. Whether or not you were at any time employed by the complainants to procure a reinsurance in their behalf upon the ship "Great Republic?" If so, when?

5. Whether or not at any time you made application to the defendants to reinsure the complainants upon the ship "Great Republic?" If so, state fully and particularly when you applied, to whom you made application, and what answer you received, and

from whom. If you had more than one interview with any officer or agent of the defendants upon the subject of such re-insurance, state precisely the date of any and every such interview, and an exact narration of the conversation between yourself and any officer or agent of the defendants, and give the name or names of such officer or agent?

Objected to.

6. Whether or not you communicated to the complainants the result of any interview or negotiation had by yourself with the defendants, they acting through their officers? If so, at what time or times did you communicate such result?

Objected to.

7. Whether or not at any time you called upon the respondents in behalf of the complainants for a delivery of a policy upon the "Great Republic?" If so, state when, and whether more than once, and what reply or replies were made, and by whom?

8. Whether or not you put your signature to any application for re-insurance upon the "Great Republic," made by you to the defendants in behalf of the complainants?

9. When an application for insurance is made to an underwriter doing business at Boston, and the application is accepted, what is, or in the year eighteen hundred and fifty-three was, the general course of business as to the time of the execution and delivery of the policy? State whether or not the policy is ordinarily and generally delivered immediately upon such application and acceptance thereof?

Objected to.

10. Whether or not you made any charge against the complainants for your services in relation to the ship Great Republic. If so, how much and for what services, and whether the same has in any way been allowed or paid to you by the complainants?

Objected to.

11. When did you first hear that the ship Great Republic had been destroyed or injured by fire?

12. When was the fact of such destruction or injury known by the defendants, so far as you have any knowledge upon the subject, and how do you know that they had a knowledge of the fact?

Objected to.

13. Whether the complainants at any time gave you a written power of attorney to demand of the defendants a policy upon the ship Great Republic. If so, annex a copy and state when and what you did in pursuance thereof?

14. If at any time you made application to defendants to re-insure the complainants upon the ship Great Republic, please say on what day you first made such application—and of whom and what reply—also if you had a second interview with the defendants' officers, or any of them, upon the same subject? State when and with whom

was such second interview, [and what was said on the one side and on the other.] Clause in brackets objected to.

15. Whether or not, so far as you know, it has been usual or customary for persons procuring insurance at marine offices doing business at Boston, to pay or secure the premium before the execution and delivery of the policy?

Objected to.

16. Whether or not, at the time you first requested the defendants to issue a policy upon the Great Republic in favor of the complainants, you had the means within your control of paying or securing the premium?

17. Whether or not the defendants or any one of their officers or agents at any time assigned as cause of refusal to issue a policy that the premium had not been paid or secured? If you say that they did so object, state when and by whom such cause or refusal was made.

18. Have you had a written correspondence with the complainants in relation to a re-insurance by the defendants in favor of the complainants upon the ship "Great Republic?" If so, annex copies of such correspondence or of parts thereof, so far as they relate to such insurance.

Objected to.

19. Whether or not at any interview with an officer or agent of the defendants of which you have spoken, anything, and if anything, what, was said and by whom, in relation to the reservation of a right in behalf of the complainants to have, in a certain event, a cancellation of any policy which the defendants might issue upon your application?

Objected to.

20. Whether or not the defendants, by their officers or agents, at any time, as cause of their refusal to issue a policy, said that the terms to be contained in the policy demanded by you had not been fully and perfectly understood and agreed? If so, when and by whom was such cause of refusal assigned?

Objected to.

C. B. GOODRICH,
For the Complainants.

April 11, 1855.

Cross-interrogatories to be propounded to Charles W. Storey, a witness produced and to be examined by the plaintiffs.

1. Were you the general agent of the plaintiffs above named? If so, set forth the instrument constituting you such, or were you specifically appointed for the transaction regarding which you may have testified, and if so, what were your instructions in regard to the same, and if the same were in writing, annex the same, or true copies of the same to your answer hereto.

2. Had you ever, prior to the application about which you have been interrogated, applied to the defendants for insurance or re-insurance, and if so, when, and in whose behalf, and on what vessel or vessels, or other property, and to whom did you make such application, and state the result of the same?

Objected to.

3. Had you ever, before the transaction about which you have been interrogated, transacted any, and if so, what business, and when, with the defendants? Had you any acquaintance with any, and, if so, which of its officers, and for how long?

Objected to.

4. To whom did you first make application for insurance on the Great Republic; was it to the president of the defendants, or some of its other officers or clerks?

5. If you shall have said you made application for insurance on the Great Republic, on the 24th of December, 1853, did you not on your first visit to the defendants' office on that day, find the president absent therefrom? Did you not at that first visit leave the application, a copy of which is annexed to the defendants' answer, to be handed to the president? Did you not subsequently return and have an interview with the president, in regard thereto? Did you not, after conversation with the president, decline to procure the insurance at the rate of premium named by him therefor, and did you not leave the defendants' office, and carry away with you the application by you previously presented?

6. At what time of the day was your interview with the President of the defendant had, upon the 24th day of December, 1853?

7. To what insurance offices other than the defendants' did you make application for insurance on behalf of the plaintiffs, upon the ship Great Republic? State the name of all offices, and to whom you made application?

Objected to.

8. To what office did you first make such application, and at what time, and will you state the order in which you made your applications, and to what officers you made application after your interview with the defendants' president on the said 24th day?

Objected to.

9. By whom was the written portion of the application made? Was the same filled up by you, or sent to you from New York; if so, when was the same sent to you, and accompanied by what letter or instructions, and annex the same; and if the same was filled up by you, in pursuance of what letter or instructions was the same done, and annex the said letter or instructions to your answers?

10. Did you on the 24th day of December, 1853, and after your interview with the defendants' president, make any communication either by telegraph or letter to the plaintiffs, and annex the same; and did you have any reply or replies thereto? If so, how were same received, and when, and annex the same to your answers?

11. When was your next interview with the defendants' president? Was it not on Monday, the 26th of December, 1853? Was not that day generally observed as Christmas day?

Were not the banks generally closed on that day, and the insurance offices, and stores of merchants, and offices of brokers? If you shall say any business was done on that day, by whom, and what was done, and how much compared with the other days of that week, or the week previous?

Objected to.

12. Was not the defendants' office apparently closed for business on that day? Were not the curtains drawn? Were any of the officers and clerks present at the office? Was there any one there except the president? Was there any appearance of business going on there on that day, or any persons apparently transacting business there?

13. Were you not informed by the defendants' president that the office was not open for business on that day, and that no policy could be made on that day—that the secretary and clerks were none of them at the office, and would not be that day?

14. State whether you at any time, prior to the loss of the Great Republic, exhibited to the defendant, or any of its officers, any authority or instrument authorizing or empowering you to act for the plaintiffs, or obtain re-insurance for them? If so, you will annex the same to your answers?

15. *Exhibited de bene esse.* If in your answers to the 9th and 15th direct interrogatories, you have spoken of the general course of business and usage of insurers in Boston, please to state your means of knowledge respecting the same? Whether you are an insurance broker or agent by profession, and how extensively you are engaged in the business of procuring insurances, and how long have you been so?

16. As above. Is not the business of making insurance in Boston now done exclusively by corporations? Have you been in the practice of doing business with all of them, and if not, with how many, and which of them? To your knowledge are the usages and course of business in all of them uniform and similar?

17. As above. If you have undertaken to say that there is any usage or course of business among the insurance companies of Boston, by which it is held that as soon as the terms of a proposed insurance are agreed upon the same becomes a valid and binding contract upon the proposed insurer, without making a policy, or any agreement in writing, please to state in how many instances you have known such a practice to prevail, and the particular circumstance of each case?

18. As above. Do you know of any case similar to the present having occurred, in which any insurance company was interested? If so, please to state all the circumstances of the case?

19. Did you not know when you applied for said insurance, that

the laws of Massachusetts required all contracts of insurance made by a corporation created by it to be in writing, and to be signed by one or more of its officers?

HARVEY JEWELL,
Solicitor for Respondents.

Answers of Charles W. Storey to the interrogatories to him addressed:

To the first he says: My name is Charles W. Storey. I am thirty-eight years of age, and a counsellor at law. I reside in Roxbury, and transact my business in Boston.

To the second he says: Yes, sir—very often.

To the third he says: I have been employed by other parties but only in one or two instances, and here in Boston.

To the fourth he says: I was so employed on the twenty-fourth day of December, eighteen hundred and fifty-three.

To the fifth he says: I made application to the defendants to reinsure the complainants ten thousand dollars on the ship Great Republic. I made such application on the twenty-fourth day of December, eighteen hundred and fifty-three. I called at the office of the Commercial Mutual Marine Insurance Company, in State street, in Boston, in the forenoon of the twenty-fourth day of December, being Saturday, and I think before twelve o'clock. I inquired for the president, and was told he was not in, and I left, with a gentleman whom I took to be the secretary of the company, an application, of which the exhibit, annexed and marked A EGL, is an exact copy; I asked him to show it to the president, and on his saying he would, I said I would call again and I left the office. In course of half an hour or an hour afterwards, I called again at the office of the company, and there saw the president, Mr. Folger; I spoke to him on the subject of the application I had left, and he said he would take the risk therein proposed at six per cent. per annum for one year. I asked him the rate for six months; he said he supposed that they would have to cancel the policy if the vessel should be sold within the time, and as I assented; he then consulted with a gentleman standing near us on the subject; the name of the gentleman I don't know, and then told me he would take the risk for six months at three-and-a-half per cent. I told him I would transmit his offer to the Union Mutual Insurance Company, at New York; he nodded and I left. I sent a despatch immediately by telegraph to the Union Mutual Insurance Company, at New York, saying the risk can be done at three-and-a-half, or six per cent. a year. I received on Monday, from Mr. Tappan, the vice-president of the Union Office, the two letters and the despatch which are annexed, and marked by the commissioner B EGL, C EGL, and D EGL, respectively. I found them at my office when I reached it at about eleven o'clock of the forenoon, Monday, the 26th

December, 1853, being the day which was that year celebrated as Christmas. I immediately went down with these papers, including the application, to the office of the Commercial Mutual Marine Insurance Company, and I there saw the president, Mr. Folger, and told him that the said Union Insurance Company had accepted his offer on the Great Republic, and desired to have the privilege of cancelling the policy if she should be sold. He replied that the usage here would settle the matter of cancelling, and that he would not put anything of the kind into the policy; and after some conversation as to his understanding in regard to the usage I agreed to take the policy without any mention of the cancellation, and he acceeded to that agreement. I then had some general conversation with him respecting his keeping his office open when most or all of the other insurance offices appeared to be closed, and as to the qualities of the ship Great Republic, and as to the weather; but I said nothing with reference to the contract between us till after some five or ten minutes, when I was about leaving, I took up the application which I had handed him, and which was lying on a desk before us, and which was marked 3 per cent. as it had been when I originally left it for him, (when I said the paper annexed, and marked A EGL, was an exact copy of the application I made, I should have stated the original application was written 3 per cent. instead of 3 1-2 per cent.,) and I said to Mr. Folger I will make it three and a half. I took up the pen to do it, but there was no ink in the pen, and Mr. Folger went to his own desk in the corner of the office, dipped a pen in the ink there and handed it to me; and I marked the 1-2 after the three (3) on the application, and handed the paper to him; he bowed, and I bid him good morning and left the office. The next day I called on Mr. Folger, at the office of the company, and asked him what he had heard about the disaster to the ship; he said he had no more information than was contained in the newspapers of the day; he was engaged with a third person at the time, and I said no more, but turned to leave the office. In leaving the office, I passed the person whom I took to be the secretary, at his desk, and asked him if he had a policy for me; he said no, and glanced at the president. I did not follow his glance, but asked him to send me the policy when it was made out; there was no other policy in which I was concerned then making out at the office except this on the Great Republic. I then left the office. I called again on the next day, Wednesday, and I think I asked the secretary or clerk for the policy, and that he referred me to the president; however that may be, I did speak to the president in regard to the policy on the Great Republic, and, to my surprise, he said he was in doubt whether the contract was complete, as it was made on a Christmas day, but that he had not made up his mind about it and did not wish to talk about it then. I asked him if the fact that the contract was made on a Christmas day was the only reason why he doubted if the

contract was complete. I think my language was why he doubted about giving me a policy; he replied yes, that it was Christmas day, and that the office was not open for business. I told him I did not think he would make much out of that, and bade him good morning and left the office. I called again the next morning, Thursday, and spoke to the president again about the policy; he said he was still in doubt about it, and added that he believed he told me on Monday the office was not open for business. I told him I did not recollect that he said anything of the kind. He then said that he thought he had told me the office was not open for business, and he would let me know the next day whether he would take the application; I told him he said nothing of that kind. He made no reply or none that I recollect, and I think he said nothing. I then told him I was fully satisfied in my own mind that he never would be satisfied unless he paid the loss; that I did not believe he had been in the habit of doing business on such principles, and that I thought he would find it hard to begin; he looked confused, but said nothing, and I left the office. I called again at the office of the Commercial Mutual Marine Insurance Company, and addressed myself to Mr. Folger, on the twenty-sixth day of April, A. D. eighteen hundred and fifty-four, and exhibited to him the power of attorney, annexed and marked by the magistrate E EGL, which he took and apparently examined at some extent, and I said to him at the same time, I have come to make a formal demand on you for the Union Mutual Insurance Company, in accordance with the power of attorney, for a policy on the ship Great Republic, dated December 24th, 1853, for ten thousand dollars, according to the application which I left with you on the 26th of December, and which you accepted, and to tender you the amount of the premium and interest from December 24th, and the price of the policy; and I exhibited to him three hundred and sixty dollars, in American eagles, which I held in my hand. This was the substance of my demand. He replied in substance: "I decline to take the money, and decline to give you a policy." I told him I did not suppose he would, and left the office. Since I commenced giving this deposition I have called at the office of the Union Telegraph Company, and seen the despatch I sent to Mr. Tappan, December 24th, 1853; the Telegraph Company declined to give me my original despatch, as being against the rules of the company, but they gave me a copy, and I annex it, and it is marked by the commissioner F EGL; all within the black ink line is a copy of my original despatch to Mr. Tappan; that despatch was in answer to the despatch received by me from Mr. Tappan, and annexed and marked G EGL by the commissioner. I received this despatch 24th December, 1853, just before I left the application at the office of the Commercial Mutual Marine Insurance Company, for the first time on that day. I had previously, on the twenty-second or twenty-third, received the letter annexed and marked H EGL, by

the commissioner, the postage of which in lead pencil, as well as the letter itself, is in Mr. Tappan's handwriting, and on the 24th of the same December, I received the letter annexed, marked I EGL by the commissioner, the postscript of which is also in the handwriting of Mr. Tappan. On the twenty-fourth of the same December, I wrote the letter annexed, and marked J EGL, by the commissioner, to Mr. Tappan, and it has since been returned to me by him; and on the twenty-eighth of the same December, I received from Mr. Tappan the letter annexed, marked K EGL, by the commissioner. I had made no other re-insurance on the Great Republic except what I have before stated. On the 26th, I sent the letter annexed, marked L EGL, by the commissioner, to Mr. Tappan, and have since received it from him; and on the 28th of the same December, I wrote to Mr. Tappan the letter marked M EGL, by the commissioner, and have since received it again by Mr. Tappan; and on the 26th January, 1854, I wrote to Mr. Tappan the letter annexed and marked N EGL, by the commissioner, and have since received it from Mr. Tappan. I received the two letters from Mr. Tappan, which are annexed and marked by the commissioner, one O EGL, the other P EGL. I received them respectively in course of mail after their date, and I wrote to Mr. Tappan, on the day of its date, the letter annexed and marked by the commissioner, Q EGL, and have since received it from him. I don't know the name of the secretary of the Commercial Mutual Marine Insurance Company; the name of the president is Folger, and, I believe, George H. Folger.

To the sixth: I believe it appears by the papers. I have answered precisely what communication I did make to the complainants and their respective dates; after making the tender I spoke of, I wrote another letter communicating that; of this letter I have no copy.

To the seventh, he says: Before making the tender, I called on Mr. Folger and proposed to him to agree the facts and refer the question to arbitration; he said he would consult his counsel, and then he declined to refer the question; he also declined to agree the facts, although he said he would receive any statements of facts I might make, and give it a respectful consideration. I believe I have now stated all the communications I had with the respondents. I probably communicated to Mr. Tappan the result of the interviews with Mr. Folger, stated in this answer, but as those letters were not deemed material, and as my correspondence with Mr. Tappan is very voluminous, I have not got those letters.

To the eighth, he says: I did not. I have scarcely ever signed one so in the course of making three hundred or more.

To the ninth, he says: It is usual to deliver the policy the next day or within a day or two after the accepting the application. I have never waited to have a policy made out, and I believe it

unusual for the assured to do so. I believe the usage was the same in eighteen hundred and fifty-three.

To the tenth, he says: I charged them five per cent. on the amount of premium, and the charge was seventeen dollars and fifty cents. I sent it on, included in my account current, to the Union Insurance Company, in January, 1854, and it was, with the rest of the account, paid immediately; the charge was my usual charge, and is my only charge respecting this business and the only one I intend to make.

To the eleventh, he says: I first obtained the information Tuesday morning, December, 27th, 1853, through the newspapers.

To the twelfth, he says: I asked Mr. Folger, on the morning of the 27th of December, 1853, if he had heard any particulars in regard to the fire on board the Great Republic, and he told me heard nothing more than was in the newspapers. The newspapers of that morning contained telegraphic messages that the ship was on fire, and that there was a large fire raging around her.

To the thirteenth, he says: I have already complied with this interrogatory and answered it.

To the fourteenth: I have already answered.

To the fifteenth: I have never known it to be done.

To the sixteenth: I had.

To the seventeenth: No such objection was ever made or intimated.

To the eighteenth: I have annexed the original correspondence relating to the subject, in answer to the previous interrogatories, except the paper I annex now, and which is marked by the commissioner R EGL. For the last two years I have written to Mr. Tappan nearly as often as once a day, and he to me as often, and in his letters there have been inquiries as to the progress of the suit, but nothing material to the contract.

To the nineteenth: I recollect nothing further than I have stated.

To the twentieth: No such cause of refusal was ever assigned or intimated.

Answers of said Charles W. Storey to the cross-interrogatories to him addressed:

To the first, he says: I was not the plaintiffs' general agent, though I had very often done such business for them before that time. I have already stated my authority and annexed all the papers relating to the same.

To the second, he says: I had two or three times made applications to the defendants to take other risks and they had declined them: perhaps in the year before I may have made half a dozen applications, all on behalf of the complainants, and on vessel or property of which I have no recollection, and all of which, I believe,

were declined by the defendants. These applications were made to the president of the company, either Mr. Williams or Mr. Folger; I am quite confident I made one or two applications to Mr. Folger.

To the third, he says: I had transacted no business with the defendants other than that stated, except I believe I once called on Mr. Williams in relation to a loss or risk in which both the complainants and defendants were alike interested. I knew Mr. Williams as predecessor in the office of president to Mr. Folger. I had known Mr. Williams about a year before my first application in this case; Mr. Folger a short time, perhaps a month or two.

To the fourth, he says: I have stated already.

To the fifth, he says: I have already answered the whole of this question, and I refer to my previous answer. I think I carried the application away with me, and I am confident I did.

To the sixth, he says: I think about noon.

To the seventh, he says: I believe I offered it to every Marine Insurance Company in the city of Boston, if not every one; I made the application to the presidents of the offices. I don't think I omitted any, and therefore I suppose it not necessary to state the names of offices.

To the eighth, he says: I inquired at the offices to know if they would take any risk on the Great Republic, and they had said they should not wish to take any risk on it; this was previous to my application to the defendants, and about on 22d, 23d, and 24th of December; the order of these applications I can't remember, nor which office I applied to first. These inquiries are what I meant by the term application in my previous answers. I don't remember making an application in form to any office than the defendants'. After I left the defendants' office, on the 24th, after leaving the application with the clerk of the defendants, I met Col. Adams, the president of the New England Company, in the street; I asked him whether he would take the risk referred to; I had spoke to him about it before; and he replied in substance, that he believed he had enough.

To the ninth: The application was made by me on receiving the first telegraphic despatch annexed, and I have already annexed my instructions.

To the tenth: All this I have answered and complied with.

To the eleventh: This I have answered as to the first part. As to the banks, I can't say whether they were closed or not. The insurance offices appeared to be generally closed, and I should say a large proportion of the stores as far as I noticed; I thought myself fortunate to find Mr. Folger in, and said as much to him. About the brokers' offices I knew nothing. State street was very quiet. I only knew there appeared to be but little business doing, and I only kept my office open long enough to make this contract and write to New York. I had done so.

To the twelfth: I don't remember seeing any one in the office

on the 26th except the president. I have no recollection that the curtains were drawn or there were any there. I don't think any business was transacted there while I was there, except what I have mentioned,

To the thirteenth: I think it very likely he informed me no policy would be made that day, and that the clerks and secretary were not there; I should have attached no importance to such a communication, and I have an impression he said something of the kind. I don't remember that he said anything of the office not being open for business, except that after I had informed that we had acccepted his offer, and the conversation respecting that had closed for the time—I remarked on his office being open when most of the offices appeared to be closed, and said I was fortunate in finding him in; I think he then said something about the office not being open for general business; but he at no time intimated any unwillingness to attend to my business.

To the fourteenth: I never did.

To the fifteenth: I am not an insurance broker by profession. I have effected over three hundred re-insurances for the plaintiff within the last three years, and offered as many applications, perhaps, which have not been accepted; this is the extent of my experience; where I have effected an insurance I have taken the policy and sent it to New York, and afterward handed in the note of the re-assured. The Boylston Company do me the favor of sending on the policy themselves, and I hand them usually the premium notes.

To the sixteenth: I believe the business is done almost exclusively by corporations. I have made re-assurances with the Boylston, the New England, the Equitable, the Alliance, the Suffolk, the Boston, the Hope, the Neptune, the Washington, and the Warren Insurance Companies; in the way of making re-assurances, their usages so far as I know are uniform, except that the president of the Equitable Insurance Company usually signs an application he has accepted, and perhaps also the president of the New England; but I have never known any of the others to do so in any instance I now recollect.

To the seventeenth: I have never known a loss to occur, except in this instance, before a policy was given and subsequent to an application being accepted. In the course of my business I have never required a signature to an application by the president, nor have I known one to be signed in more than half a dozen instances, and I think I never signed but one myself; that it was an application to the New England Insurance Company, made some time ago.

To the eighteenth: I do not of my own knowledge.

To the nineteenth: I did not.

CHARLES W. STOREY.

UNITED STATES OF AMERICA,
District of Massachusetts, first circuit.

This twelfth day of May, A. D. 1855, personally appeared before me the above-named deponent, Charles W. Storey, who being duly cautioned and sworn to speak the whole truth and nothing but the truth in relation to the cause for which his deposition was examined by me, on the interrogatories and cross-interrogatories to him addressed and annexed to the commission hereto prefixed, and his answers thereto written down by me, in his presence, after being carefully read over to him by me, were by him subscribed in my presence, as and for his deposition. Taken by the authority of said commission, to be used in the case therein specified.

EDWARD LORING,
Commissioner to take bail and affidavits for U. S. Court in said district.

Commission fees, $14 00
Witness' " 1 25

A EGL.

Re-insurance is wanted by the Union Mutual Insurance Company, New York, for $10,000, on the ship Great Republic, from December 24th, 1853, at noon, for six months ensuing.

This policy is to be subject to such risks, valuations, and condition, including risk of premium note, as are or may be taken by the said Union Mutual Insurance Company, and payment of loss to be made at the same time. 3½ per cent.

Binding, ——— ———,
President.

New York, Dec. 24th, 1853.

B EGL.'

OFFICE OF THE UNION MUTUAL INSURANCE COMPANY,
New York, December 24th, 1853, *P. M.*

CHAS. W. STOREY, esq., Boston:

DEAR SIR: Your despatch concerning the Hinda, and letters of the 23d, with check for $878 46, came duly to hand. We telegraphed you this morning to re-insure $10,000 on the Great Republic for six months, and now enclose you blank applications, that you may re-insure by the voyage to Liverpool at 1¼, if you cannot get it done on time. Please do your best for us as we have a large line upon her.

In haste, very truly, yours,
JNO. S. TAPPAN, *V. P.*

C. EGL.

OFFICE OF THE UNION MUTUAL INSURANCE COMPANY,
New York, December 24th, 1853.

CHAS. W. STOREY, esq., Boston:

DEAR SIR: We have your despatch of this afternoon, and now write to confirm our answer which was to effect the insurance for six months, privilege of cancelling the policy at any time should the vessel be sold or change owners.

As Monday is a holiday with us, we write this afternoon, as we are desirous of having the risk done, leaving any unsettled matters connected with it for future consideration.

Very respectfully, your most obedient servant,

JNO. S. TAPPAN, *V. P.*

D EGL.

The Union Telegraph Company, between New York, Providence and Boston, connecting with the Eastern and Northern Lines to Halifax.

To the telegraphing public: Please write plainly; answer quickly; *pre-pay;* use no figures except dates—they cost more; give name, street, and number of the party addressed, to insure prompt delivery; also, your own address under your signature; no charge for address and signature. The above is for your safety as well as our convenience.

H. M. SCHIEFFELIN, *Pres't.*

CHAS. F. WOOD, *Sup't.*

Office in Boston, 76 State street. By telegraph. Dated New York, 1853. Rec'd, Boston, Dec. 24, 1853, 6 o'clock, 50 min., p. m.

TO CHAS. W. STOREY: Do it for six months, privilege of cancelling if sold.

JOHN S. TAPPAN.

E EGL.

Power of Attorney.

Know all men by these presents, that the Union Mutual Insurance Company, of the city of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Charles W. Storey, esquire, of Boston, in the State of Massachusetts, their true and lawful attorney, for them and in their name, place, and stead, to demand and receive from the Commercial Mutual Marine Insurance Company, of Boston, in the State of

Massachusetts, a policy of insurance upon the ship Great Republic, and to tender and pay the full and proper premium, costs, and expense of the said policy and insurance, hereby giving and granting unto their said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as they might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that their said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, they have hereunto set their seal,
[SEAL.] and caused these presents to be attested by their president, the twenty-fifth day of April, in the year one thousand eight hundred and fifty-four.

F. S. LATHROP,
President.

Sealed and delivered in the presence of
A. R. RODGERS.

STATE OF NEW YORK,
City and county of New York, } ss.

I, Alexander Robertson Rodgers, a public notary of the State of New York, duly commissioned and sworn, dwelling in the city of New York, do hereby certify, that on the day of the date hereof, before me personally came and appeared Francis S. Lathrop, esquire, to me personally known, and known to be the president of the Union Mutual Insurance Company, of the city of New York, who, being by me duly sworn, did declare that he was the president of said company; that the seal affixed to the within instrument is the corporate seal of said company; that it was so affixed by order of the directors of said company; and that he signed his name to said instrument by the like order, as such president of the said company.

In testimony whereof, I have hereto subscribed my
[L. S.] name and affixed my official seal, at the city of New York aforesaid, this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and fifty-four.

A. R. RODGERS,
Not. Pub.

F EGL.

Union Telegraph Company, Merchants' Exchange, State street. Office opposite the Post Office delivery.

Notice.—The only Morse line south and west.

BOSTON, 1855.

[Copy of despatch No. 110, December 24th, 1855. Sent 4: 27 p. m.]

To John S. Tappan, esq., Union Mut. Ins. Co., New York:

This risk can be done at three and a half, or six per cent. a year.

CHARLES W. STOREY.

A true copy.

S. H. CHAPMAN,
Union Tel. Co.

G EGL.

The Union Telegraph Company, between New York, Providence and Boston, connecting with the Eastern and Northern lines to Halifax.

To the telegraphing public.—Please write plainly; answer quickly; *pre-pay;* use no figures except dates—they cost more; give name, street and number of the party addressed, to insure prompt delivery; also, your own address under your signature; no charge for address and signature. The above is for your safety as well as our convenience.

H. M. SCHIEFFELIN,
Pres't.

CHAS. F. WOOD, *Supt.*

Office in Boston, 76 State street. By Telegraph. Dated New York, 1853. Rec'd Boston, Dec. 24, 1853, 11 o'clock 30 min. a. m.

To C. W. Storey: Please re-insure ten thousand on ship Great Republic, for six months, at 3 per cent.

JNO. S. TAPPAN.

H EGL.

OFFICE OF THE UNION MUTUAL INSURANCE CO.,
New York, December 21st, 1853.

Chas. W. Storey, esq., Boston:

Dear Sir: We expect to have half of the cargo of the bark Huma, from Odessa, where she was at last accounts, and should like to have you effect the enclosed at 2 3-4, which is the same rate as we get ourselves. The vessel rates with us A 2.

In haste, truly yours,

JNO. S. TAPPAN, *V. P.*

In pencil:
"Please ask if your offices are full on the Gr't Republic."

I EGL.

OFFICE OF THE UNION MUTUAL INSURANCE COMPANY,
New York, December 23*d*, 1853.

Chas. W. Storey, esq., Boston:

Dear Sir: We have your esteemed favor of the 22d inst. with check for $347 66, and note for $237 50, for the settlement of losses against the Boston Co., and return you the former as you have neglected to endorse it. The "Huma" had not sailed at last accounts, and is of course in good time.

We enclose you application for $5000 cargo pt. ship "Skylark," hence for San Francisco, cleared Sept. 19, '53; we find on looking over that we have a larger amount than we ought to keep. The arrangement you proposed making with the Brighton is satisfactory, but the deduction is not as large as we would be justified in expecting from the Mutual Companies. We will mark the risks which we wish you to offer them. We have a memoranda on our books of re-insurance of $5000 at the Alliance, and $5000 at the New England, the former on the R. B. Palmer, the latter per Neptune's cargo. Please ascertain if those companies have open applications for us, and oblige,

Very respectfully, your most obedient servant,
JNO. S. TAPPAN, *V. P.*

We may want $5000 for Great Republic.

J. EGL.

BOSTON, *December* 24, 1853.

John S. Tappan, esq.,
Vice President Union Mutual Ins. Co., New York.

Dear Sir: I have your valued favor of yesterday, with enclosed check for $347 66, which I re-enclose you herewith, with an apology for my neglect to endorse it in the first place.

Your favor also enclosed application for re-insurance $5000 c. per Skylark a 2 3-4, which is taken by the Equitable Ins. Co.

Mr. Balch, I presume, thinks he offers fairly for your risks, as most of our Mutual Cos., if not all, have been unlucky the past year, and will probably make no dividends. I note that you will mark applications to be offered to the Boylston Co., but presume you will wish me to offer them also such as I cannot get taken elsewhere.

The Alliance and New England companies say they have no open applications from you, and I know of none elsewhere.

I do not believe I can get a dollar taken on the Great Republic; but, if you wish me to try to "enter a wedge," I will use my best

exertions. If Mr. McK. (the rest of his name seems superfluous) had originally applied here, I think our offices would have felt bound to insure him to a considerable extent, by way of taking their share in a Boston enterprise, but as he preferred going to New York in the first instance, they appear willing to leave him there.

I have this moment (11.27 a. m.) received your despatch requesting me to re-insure for you $10,000 on the Great Republic, for six months, at 3 per cent., and will now endeavor to do so.

I have been well round State street, and have just telegraphed you that I can get this $10,000 done on the Great Republic at 3 1-2 per cent. for six months, or at six per cent. a year. This is the offer of the Commercial Co.

The New England Co. have taken from Mr. McK. $20,000 at 6 per cent. per annum, for one year. The China Co. have a small sum, but decline anything further. And they are the only companies in the city who have anything on her, so far as I can learn.

What I said above as to the dividends of our Mutual Insurance Companies is rather broader than the rumor I heard. I had forgotten, when I wrote, how many mutual companies we had.

Very respectfully, yours,

CHAS. W. STOREY.

K EGL.

OFFICE OF THE UNION MUTUAL INSURANCE COMPANY,

NEW YORK, *December 27th*, 1853.

Chas. W. Storey, esq., Boston:

Dear Sir: We have your valued favors of the 24th and 26th insts., and now write to announce the total destruction by fire, last night, of the once noble ship Great Republic. The fire commenced in a bakery some distance from the shipping, but the violence of the gale which was blowing at the time carried the sparks into the rigging of the vessels, and they were soon enveloped in flames. The loss of the insurance offices here will exceed a million of dollars, as the savings will be very small.

We have no knowledge of the responsibility of the Commercial Insurance Company, in which you re-insured the Great Republic, and should be glad to be informed as to their standing and means.

In haste, very truly, your most obedient servant,

JNO. S. TAPPAN, *V. P.*

L EGL.

BOSTON, *December 26th*, 1853.

John S. Tappan, esq.,

Vice President Union Mutual Ins. Co., New York:

Dear Sir: I have your esteemed two favors of the 24th, and telegraphic despatch of same date, directing me to effect the reinsu-

rance on the Great Republic at 3½ per cent. for six months, with privilege of cancelling if the vessel shall be sold. I have accordingly made the reinsurance with the Commercial Insurance Company, with the verbal understanding that the policy may be cancelled according to our usage in such cases, which is, to retain enough of the premium to pay for the risk already incurred; as, for example, if the ship should arrive at Liverpool and be sold there, they would reserve a fair rate for the passage, if the proportion of the time premium should be insufficient.

I have received no encouragement that any further insurance can be made on her, and I believe I have tried every office in the city, except the Manufacturers' and Mercantile, (which only write their own policies,) the Franklin, and the Metropolitan.

Very respectfully, yours,

CHAS. W. STOREY.

M EGL.

BOSTON, *December 28th*, 1853.

John S. Tappan, esq.,
Vice Pres't Union Mutual Ins. Co., New York:

Dear Sir: I am exceedingly sorry that the Great Republic should have failed so utterly even to show what she could do, and very sorry for your loss by her also.

The Commercial Co. was formerly called the "Coasters'." It is a very good company, I believe, but I am a little unwilling to make inquiries in regard to it under present circumstances. I will, however, endeavor to learn more about it as soon as I can, and advise you.

Very respectfully, your most obedient servant,

CHAS. W. STOREY.

N EGL.

BOSTON, *January 26th*, 1854.

John S. Tappan, esq., New York:

Dear Sir: I enclose you herewith copies of your despatches and letters to me respecting the reinsurance by the Commercial Company on the Great Republic, written before the insurance was effected.

A postscript to your favor of Dec. 23 is in these words:

"We may want $5,000 per Great Republic."

On Dec. 24th I received this despatch:

"Dated New York, 1853. Rec'd, Boston, Dec. 24, 1853, 11 o'clock 30 min. a. m.

"To C. W. Storey:

"Please reinsure ten thousand on ship Great Republic for six months at 3 per cent.

"JOHN S. TAPPAM.

"15—ans."

Upon this I endorsed—.

"Commercial Co. offer to take within application at 3½ or at 6 per cent. per annum."

Having telegraphed you the offer, I received, on Monday, Dec. 26th, the following despatch, which appears to have reached Boston at "6 o'clock 50 min. p. m.," Dec. 24th, viz:

"To Chas. W. Storey:

"Do it for six months, privilege of cancelling if sold.

"JOHN S. TAPPAN."

At the same time that I received the last despatch, I received two letters, each from yourself as V. P., to me, and each dated Dec. 24th, 1853—the second dated also "p. m." Those letters are as follows, viz:

1. "Your despatch concerning the Florida, and letter of the 23d with check for $878 46, came duly to hand.

"We telegraphed you this morning to reinsure $10,000 on the 'Great Republic' for six months, and now enclose you blank application, that you may reinsure by the voyage to Liverpool at 1¼, if you cannot get it done on time. Please do your best for us, as we have a large line upon her."

2. "We have your despatch of this afternoon, and now write to confirm our answer, which was, to effect the insurance for six months, privilege of cancelling the policy at any time, should the vessel be sold or change owners.

"As Monday is a holiday with us, we write this afternoon, as we are desirous of having the risk done, leaving any unsettled matters connected with it for future consideration."

I sent you a copy of the application made from memory, and presume you have the letters which I wrote at the time to you.

Very respectfully, yours,

CHAS. W. STOREY.

O EGL.

OFFICE OF THE UNION MUTUAL INSURANCE COMPANY,

New York, December 28th, 1853.

Chas. W. Storey, esq., Boston:

Dear Sir: We enclose you herewith notes No. 549 for $72 a 7 months, No. 550 for $91 a 7 months, by Boylston Insurance Company, which please hand the company.

We have not yet received policy for ship Great Republic. It is thought to-day that she can be repaired.

Very respectfullly, your most obedient servant,

JNO. S. TAPPAN, *V. P.*

P EGL.

OFFICE OF THE UNION MUTUAL INSURANCE COMPANY,
New York, December 29th, 1853.

Chas. W. Storey, esq., Boston:

Dear Sir: We have your favor of the 28th instant, and note your remarks concerning the standing of the Commercial Company, and trust that everything will yet turn out to our satisfaction.

We wrote you some days since that we had a memorandum upon our books of $5,000 as having been done at the Alliance for R. B. Palmer, and as we were in error, now hand you herewith application for same. She cleared Sept. 17th.

Very respectfully, your most obedient servant,

JNO. S. TAPPAN, *V. P.*

Q EGL.

BOSTON, *Dec. 29th*, 1853.

John S. Tappan, esq.,
Vice Pres't Union Mutual Ins. Co., New York:

Dear Sir: Your esteemed favor of yesterday came duly to hand, with enclosed premium notes to the Boylston Insurance Company, viz: $72 on "Gleaner" and "Charm, and $91 on "Emma Fields," which I have handed to that company.

You will be surprised to learn that the Commercial Insurance Company, who took the risk of $10,000 on the "Great Republic," now hesitate about giving you the policy.

I will state the facts as I remember them.

In your letter of Friday last you said you might want $5,000 on the Great Republic. I made some inquiries in consequence, and had just written the paragraph in mine of the 24th respecting the chance, when I received your despatch of Saturday, requesting me to re-insure $10,000 on the ship. I immediately went out to see what could be done, and, after calling at several offices, left the application marked 3 per cent. with the secretary or clerk of the Commercial Company, in the absence of the president. I called there nearly an hour afterwards, and found the president, Mr. Folger. He said he would take the risk at 6 per cent. per annum. I asked him the rate for six months. He consulted with a gentleman standing near us, whom I took to be a director, and named 3½ per cent. with his concurrence. (He had previously said he supposed they would have to cancel the policy if the vessel should be sold.) I said I would advise you of his offer, and left, fully understanding that the offer was open. I at once telegraphed you, but your reply, which seems to have reached the telegraph office here at 6.50 p. m., did not reach me till Monday when I arrived at my office, (it being Christmas,) at about 11 o'clock. I received at the same time your two letters of the 24th, in confirmation of the de-

spatch, directing me to re-insure at 3½, with privilege of cancelling if sold. I called at once on the Commercial Company and told the president that you had accepted his offer, and desired to have the privilege of cancelling if the ship should be sold. He replied that the usage here would settle the matter of cancelling, and that he should not put anything of the kind into the policy, and after some conversation as to his understanding in regard to the usage, I agreed to take the policy without any mention of the cancellation. He acceded, and I then said "I will make it 3½," and took up a pen which had no ink in it. He went to his own desk to get a pen, handed it to me, and I marked the ½ on the application, on his desk, and handed it to him. I then left the office, fully understanding that the contract was complete. I do not remember the words in which that understanding was conveyed to me, but I had no doubt whatever on the subject.

I called on him the next day, and we spoke about the extent of the loss, but nothing was said as to the insurance by him. As I was going out I asked the secretary, or a clerk, if he had a policy for me. He said "No," and glanced at the president. I did not follow his glance, but merely asked him to send it to me when made.

I called again yesterday, and, to my surprise, the president said he was in doubt whether the contract was complete, as it was made on Christmas day, and when the office was not open for business, but he had not made up his mind about it, and did not wish to talk on the subject then. I told him I did not think his point amounted to anything, and left.

This morning he said he was still in doubt, and added that he believed he told me on Monday that the office was not open for business. I told him I had not the slightest recollection of his saying anything of the kind. He said he thought he had told me that the office was not open for business, and he would let me know the next day whether he would take the application. I told him at once that he said nothing of that kind. I then told him that I was fully satisfied in my own mind that he never would be satisfied unless he paid the loss; that I believed he had not been in the habit of doing business upon such principles, and would find it hard to begin, and left him.

I saw the application again this morning, and send you a copy of it made from recollection. It was not signed. He has said nothing about his not having signed it, but that is a stronger point in his favor than any. I have never been in the habit of asking Presidents to sign the applications, considering such a request somewhat like an insult. Mr. Balch tells me he hardly ever signs one.

I, of course, consider the contract a perfect one, and think it can be enforced at law, if necessary, though I am not aware that the question of the signature has ever been decided.

I enclose you, at your request, my account with you, made up to

to-day. You will observe that I have charged you a commission on the premium on the Great Republic.

I fear this letter will be rather slow in its progress to New York, for all our roads are blocked up with snow.

Very respectfully, your most obedient servant,

CHAS. W. STOREY.

R EGL.

OFFICE OF THE UNION MUTUAL INSURANCE COMPANY,
NEW YORK, *January 3d*, 1853,

Chas. W, Storey, esq., Boston:

Dear Sir: Your several valued favors of the 29th, 30th, 31st ults., and 2d inst., are this morning received and contents noted. The various re-insurances are satisfactory, and we will examine your account, and forward check in a few days.

We are not a little astonished at the miserable subterfuge of the President of the Commercial Insurance Company, and can only say that we have endorsed the protest of the "Great Republic," and that we wish you to commence legal proceedings at once, if the company still presists in refusing to issue the policy. The only lame point in the whole affair is the absence of the signature; but if, as you say, the companies rarely sign re-insurance applications, this will not avail them. Please make inquiries as to the standing of the company, and if you think best to engage additional counsel you can do so, as we intend to push this matter through at once.

Very respectfully, your most obedient servant,

JNO. S. TAPPAN, *V. P.*

Please ascertain whether you can get an open policy for us on gold, from California.

UNITED STATES OF AMERICA,
The Circuit Court of the United States,
within and for the Massachusetts District.

District of Massachusetts, ss.

To any commissioner appointed by the Circuit Court of the United States, for this district:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of George H. Folger and N. Porter Cleaves, of Boston, witnesses to be examined on behalf of the defendants, and to be used in a certain cause now pending in said Court, wherein the Union Mutual Insurance Company, of New York, is plaintiff, vs. the Commercial Mutual Marine Insurance Company, defendant.

And to this end, at certain days to be by you appointed for that

purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the Circuit Court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said Circuit Court to be hereunto affixed.

Witness, the Honorable Roger *H.* Taney, at Boston, this twenty-second day of May, in the year of our Lord one thousand eight hundred and fifty-five.

H. W. FULLER, *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

☞ Depositions to be taken on paper of like size with this commission.

UNITED STATES OF AMERICA,
First circuit, district of Massachusetts.

Circuit Court. October Term, 1854.

UNION MUTUAL INSURANCE COMPANY, OF NEW YORK,
vs.
THE COMMERCIAL MUTUAL MARINE INSURANCE COMPANY, OF BOSTON, MASSACHUSETTS. } *Equity.*

Interrogatories to be proposed to George H. Folger and N. Porter Cleaves, of Boston.

Interrogatories to George H. Folger.

1. What is your age, place of residence, and present occupa-

tion, and how long have you been engaged therein? If you say you are president of the defendants' corporation, when did you become such officer?

2. Do you know Charles W. Storey, of Boston, and when did you first know him? and state the circumstances under which you first saw him.

3. Will you state whether you had an interview with said Storey on the 24th day of December, 1853, and, if so, state all that took place at that interview; whether any application was made by him in regard to re-insurance upon any and what ship or vessel? if so, was the same in writing, and will you state all which took place in regard thereto?

4. Will you state whether or not the said Storey, at any interview between you and him on said 24th day of December, left in your possession any application for insurance? If so, what was done with the same, so far as you know? Whether or not did he apply for re-insurance in behalf of the plaintiffs, upon the ship Great Republic? Did you or not offer to take the same at any rate of premium? Did he or not accept such offer? Whether or not did he then break off the negotiation and leave the office? Whether or not did you make any agreement with him to re-insure the plaintiffs, as aforesaid, at said rate of premium, at any time they should assent to pay it?

5. Whether or not the negotiation between you and him on the 24th, amounted to anything more than an offer on your part to make said insurance at a certain rate, and a refusal on his part to pay it?

6. Whether or not was anything said by him about writing to his principals, to learn if they would accept the terms proposed, or any intimation given that as between you and him the negotiation was to remain open?

7. State whether or not the office of the defendant was open on Monday, the 26th day of December, 1853, and, if so, for what purpose? Whether you were at said office, and, if so, for what purpose? Whether any and which of the other officers and clerks were there on that day, and if not there, why not? Whether any of the directors were there, and who? And if none were there, why not?

8. State whether any and what business was done at the defendants' office on that day?

9. State whether or not the banks were generally open on that day, and the other insurance offices in the city, the offices of brokers, or the stores of merchants, and, if not, why not?

10. State whether or not you, on said 26th of December, had an interview with Mr. Storey, and, if so, state all that took place at said interview. State whether or not he again presented an application for re-insurance, and what was done regarding the same?

11. Have you now in your possession the application for re-insurance presented by Mr. Storey? If you have, will you annex

the same to your answers hereto? State when you first saw the same? in whose handwriting is the written portion thereof, if you know? State whether there is upon it any writing which you recognize? if so, what is it, and by whom was it written, and when was your attention first called to it? State whether any alteration has been made in the said application since you first saw the same, and, if so, what, and by whom was the same made?

12. State what was the custom of your office in the year 1853, in regard to the reception of applications, and the filling out of policies of insurance thereon; will you state the same fully?

13. If you shall have said that on the 26th day of December said Storey left with you any application for insurance, will you state what you did with the same?

14. State whether or not any other written or printed application was made to you or the defendants' office by Mr. Storey for reinsurance on the ship Great Republic than that annexed to your answers? If so, set forth the same.

15. State whether or not Mr. Storey, or any one on behalf of the plaintiff, signed any application for reinsurance on the ship Great Republic?

16. State whether or not you made any entries in the books of defendants of any reinsurance upon the ship Great Republic, or caused any to be made?

17. State whether or not, at either of the interviews between yourself and Mr. Storey, he exhibited to you any, and if so, what authority to obtain reassurance of said ship, or to act for the plaintiffs?

18. State whether or not the defendants had any, and if so, what transactions with the plaintiffs prior to the 24th day of December, 1853, or made any reinsurance for them? State whether or not you knew any, and if so, which of its officers or agents?

19. State whether or not, on the 24th or 26th of December, 1853, Mr. Storey, or any person on behalf of the plaintiffs, made any promissory note for the premium of any insurance or reinsurance upon the Great Republic, or made any writing concerning the same? If so, please annex the same. Whether or not he paid or offered to pay the premium of any reinsurance, or said or did anything in regard thereto, and if so, what?

20. State whether or not you have ever signed or approved of any writing, any application, or any agreement for reinsurance on the Great Republic, made by the plaintiffs or on their behalf, or made any entries in regard to the same in any of the books of the defendant, or caused any to be made? If so, set forth the same.

21. State what disposition was made by you of any application made for reinsurance on the Great Republic, on the 26th of December, 1853? If any was received, where was the same placed? Whether or not was the same placed among the file of accepted applications, or how otherwise? Whether the same was placed so as

to come directly into the hands of any and what clerk of the defendants, or how otherwise?

22. State whether or not, according to the usual course of business in the defendant's office, any officer, and if so, which, was authorized to fill out a policy of reinsurance upon the ship Great Republic?

23. Whether or not you gave any directions to any officer to make out a policy upon the ship Great Republic?

24. State whether or not there was a custom of the insurance offices in Boston, in the year 1853, to consider the acceptance of a proposal for insurance a valid insurance, and binding upon the offices from the time of its acceptance? Whether or not there was a custom at that time to consider the acceptance of an application for insurance not signed by the applicant nor by the insurance company or some officers thereof as valid and binding upon the insurance company from the time of its acceptance?

25. Whether or not there was any by-law, vote, resolution, or other order or regulation of the defendant, whereby insurance could be made, or the defendant bound for any insurance, except in the manner prescribed by law, viz: by the signing of the policy by the president, and countersigning the same by the secretary? If so, set forth the same or copies of any and all such by-laws, votes, orders, or regulations.

26. If you know any other matter or thing not hitherto stated by you in your answers to the foregoing interrogatories which may be of benefit to the defendant in the action in which your deposition is taken, state the same fully and particularly, as if thereto specially interrogated?

HARVEY JEWELL,
Solicitor for the defendant.

Interrogatories to N. Porter Cleaves.

1. What is your age, and present occupation, and how long have you been engaged in the same?

2. Do you know Charles W. Storey? and when did you first know him? State whether or not he came to the defendants' office on Saturday, the 24th day of December, 1853? if so, state whether the president of the defendants' office was present at the time when he first came in, what was done and said by said Storey; state whether he made any application for re-insurance on any and what vessel; whether he presented any written application?

3. State whether or not any memorandum was made by you upon said application; if so, what was the same and for what reason was the same made?

4. State whether or not said application was left with you, and, if so, for what purpose, and what did you do with said application? Examine the application annexed to the deposition of Geo. H. Fol-

ger, and state whether or not there is any memorandum thereon made by you; when was the same made?

5. State whether or not said Storey called again at the defendants' office on that day, and had an interview with the president, and what took place at such interview?

6. State whether or not to your knowledge said application was carried away from the defendants' office by said Storey on said 24th day of December?

7. State whether or not the defendants' office was for business on Monday, the 26th of December, 1853, and if not, why not? were you at the defendants' office on that day; were any of the clerks or officers there on that day?

8. State whether said 26th of December was or was not generally observed as a holiday? whether or not upon that day the banks, brokers' offices, insurance offices and stores of merchants were open, or how otherwise?

9. State whether or not it was your duty or among your duties to fill out blank policies of insurance? if so, what was your duty in regard thereto?

10. State whether there was any custom at that time in regard to accepted applications, where they were placed, and by whom, and for what purpose, and what was your duty in regard thereto?

11. When policies had been filled out what was done with them, and when, and how, and under what circumstances were they delivered?

12. Did or not the application of Mr. Storey for re-insurance on the Great Republic ever come into your hands? state whether or not the same was found by you among the file of accepted applications on the 27th day of December, 1853?

13. If you know any other matter or thing not hereunto stated by you in answer to the foregoing interrogatories which may be of benefit to the defendant in the action in which your deposition is taken, state the same fully and particularly as if thereto specially interrogated.

HARVEY JEWELL,
Solicitor for the Defendant.

Cross-interrogatories to George H. Folger, proposed by the complainants.

First. Whether or not, on 24th of December of which you have spoken in answer to the 4th interrogatory, you said to Storey that your offer to insure would be withdrawn unless accepted on that day?

Second. Whether the name of Storey, which appears upon the application, was written by yourself, or by any clerk of the defendants?

Third. Whether on the 24th or 26th of December, of which you

have testified, you asked Mr. Storey to exhibit or state his authority to act for the complainants?

Fourth. Whether or not, when an application is made to the defendants for insurance, and the same is accepted, it has been the practice in some instances to issue the policy some one or two days after such application and acceptance.

Objected to.

Fifth. Whether or not, after an insurance has been agreed upon, and for any reason, the policy is not issued at the moment, the giving a premium note is deferred until the policy is prepared and ready for delivery.

Objected to.

Sixth. Whether or not if the complainants, by their agent Storey, had applied on the 27th December for a policy upon the Great Republic, no loss by fire having occurred, you would have issued a policy upon the terms stated in the application to which you have referred.

Objected to.

Seventh. Whether or not, on the 26th of December, you said to Storey that no insurance would be considered as made until the policy or some other instrument should be signed by the officers of the defendants.

Eighth. Whether or not, at any time before the 27th of December, you exhibited to Storey the by-laws of the defendants, or stated to him the import thereof.

Ninth. Whether or not Storey, on the 27th of December, asked, at the office of the defendants, if his policy upon the Great Republic had been made out. If you say yea, state if any reply was made, who made it, and what such reply was?

Objected to.

C. B. GOODRICH,
For Plaintiffs.

Cross-interrogatory to N. Porter Cleaves, proposed by the plaintiffs.

First. If the plaintiffs had, at any time after the 26th of December, and before any loss upon the Great Republic had occurred by fire, applied for a policy, say, whether or not, according to the best of your knowledge and information, a policy would have been issued upon the application of which you have spoken.

Objected to.

C. B. GOODRICH,
For Plaintiffs.

Answers of the said George H. Folger to the interrogatories annexed to the commission hereto prefixed, and to him addressed:

To the first, he says: My age is thirty-nine; residence, Boston; I am and have been, for upwards of two years, president of the Com-

mercial Mutual Marine Insurance Company, of Boston; I became president thereof in January, 1853.

To the second, he says: I do know him; I first knew him on the 25th of December, 1853; he came to my office to get re-insurance. He first came there during my temporary absence, and on my return, came again.

To the third, he says: I have stated that I did have an interview with him on that day. I was not at my office when he first called, but upon my return I found an application for re-insurance on the ship Great Republic, which I annex to my deposition, marked A. The words "C. W. Storey, No. 11 Court street," were put on in my office by my clerk, N. P. Cleaves. Before any answer was sent to him, he, Storey, called again in person. When he came in the second time and again presented this application, with the premium, marked 3 per cent., I consulted with one of our directors who was present, and informed Mr. Storey that we declined taking the risk on the terms proposed. I offered to take it at 3½ per cent., which he stated was more than he was authorized to give, and took the application and left the office.

To the fourth, he says: He did leave the application for re-insurance on the Great Republic, which I have annexed. The remaining portions of this interrogatory I have answered in my answer to the third interrogatory. I did not make any offer except at 2½ per cent. I did not make the offer or agreement that I would take the risk at 3½ per cent. at any time that he or his principals should assent to it. I did not know that he would ever return again; I considered the negotiations broken off, by his saying that that was more than he was authorized to pay.

To the fifth, he says: I considered that it amounted to nothing more.

To the sixth, he says: I don't recollect anything being said by him as to his writing to his principal. No intimation was made by him as to the negotiation's remaining open.

To the seventh, he says: The office was not open on that day, it being Christmas. I was there myself for a short time only, to read the papers. No other persons were there, neither clerks nor directors.

To the eighth, he says: No business of any kind was done.

To the ninth, he says: The banks were all closed, it being Christmas day; also the insurance and other offices, and the stores about the city.

To the tenth, he says: I did have an interview with him on the day inquired of, at the office of my company. I had gone in there to read my letters and papers, and was there alone. He came in and brought back the application of which I have spoken, and stated that he was ready to give the three-and-a-half per cent. I informed him that the office was not open on that day for the transaction of any business; that neither the secretary nor clerks were present, and that if he would leave the application, I would attend

to it the next day, but I could not do nothing about it then. He thereupon left the said application and went away.

To the eleventh, he says: I have annexed the same, marked A. I first saw it on the 24th of December. I do not know in whose handwriting any part of it is, except the words "C. W. Storey, No. 11 Court street," and those were written by the clerk of the company, as I have already stated. The rate of premium has been altered from 3 to 3½ per cent., but by whom that alteration was made I cannot say.

To the twelfth, he says: The custom in this regard was, for applications that were agreed upon, to be placed in a particular draw, whence the clerk took them to make out the policies in their order. The policies are then examined and signed by the president, and countersigned by the secretary. No application which was not agreed upon, was put in that draw.

To the thirteenth, he says: I placed it in a private draw in my desk apart from other applications, locked it and took away the key. In this draw I never did put publications, it being a draw used by me for private papers.

To the fourteenth, he says: No other was made.

To the fifteenth, he says: No one signed any such application.

To the sixteenth, he says: None was made, nor did I cause any to be made.

To the seventeenth, he says: He exhibited no authority at any time.

To the eighteenth, he says: We had had no transactions of any kind with the plaintiffs, and had no knowledge or acquaintance with any of its officers or agents.

To the nineteenth, he says: No promissory note, nor any writing, nor any offer to pay the premium of insurance on the Great Republic, was made by any one, nor was anything done in relation thereto, except what has been stated.

To the twentieth, he says: I never have.

To the twenty-first, he says: I have already answered this interrogatory. It was not placed so as to come into the hands of any of the clerks of the defendants, and never did come into the hands of any such.

To the twenty-second, he says: No one but the president is authorized to make a policy, and even then it must be countersigned by the secretary.

To the twenty-third, he says: I did not.

To the twenty-fourth, he says: There was no such custom, and the contrary was the fact.

To the twenty-fifth, he says: There was no such by-law or regulation.

To the twenty-sixth, he says: The only custom I know of obtaining in Boston, in regard the binding nature of unsigned applications is, the executing and delivering of the policy itself; and

while they remain in the possession of the office, any alteration may be made therein. This is where no agreement for insurance has been mutually signed.

And to the cross-interrogatories annexed to said commission he says:

To the first cross-interrogatory he says: Nothing was said about that.

To the second cross-interrogatory he says: It was written by the defendants' clerk.

To the third cross-interrogatory he says: I did not.

To the fourth cross-interrogatory he says: In our office, it is usual to make out policies the next day for all applications of the preceding day. This is invariable.

To the fifth cross-interrogatory he says: The premium note is not taken until the policy is delivered. If the party does not give a satisfactory premium note, the policy is withheld.

To the sixth cross-interrogatory he says: Very possibly we might, but I am wholly unable to answer that question.

To the seventh cross-interrogatory he says: I don't recollect to have so stated.

To the eighth he says: I did not.

To the ninth he says: When Mr. Storey came in on the 27th of December, he asked me first, whether I had received anything from New York. He stated that the Great Republic was burnt up. I said that I had not, except by the telegraph. He then went to the clerk and asked if his policy was prepared, and was informed that he had no such application.

GEORGE H. FOLGER.

Witness fee, 1 50
Com. " 7 00

$8 50

A.

Re-insurance is wanted by the Union Mutual Insurance Company, of New York, for $10,000, on the ship Great Republic, from December 24th, 1853, at noon, for six months ensuing.

This policy is to be subject to such risks, valuations and conditions, including risk of premium note, as are, or may be taken by the said Union Mutual Insurance Company, and payment of loss to be made at same time. 3 1-2 per cent.

Binding, *President.*

New York, Dec. 24, 1853.

C. W. STOREY, No. 11 Court street.

Answers of the within-named N. Porter Cleaves to the interrogatories annexed to the commission hereto prefixed, and to him addressed.

To the first he says: My age is twenty-two; and I am clerk of the Commercial Mutual Marine Insurance Company, of Boston, and have been in my present situation since the autumn of 1852.

To the second he says: I do know Charles W. Storey; I first knew him on the 24th day of December, 1853, when he came into the office of our company to procure re-insurance on the ship Great Republic; I think Mr. Folger, the president of the office, was not in when Mr. Storey first called. Mr. Storey left a printed and written application for re-insurance with me; this application is annexed to the deposition of Geo. H. Folger, and marked "A."

To the third he says: I made a memorandum on said application; I wrote the words "C. W. Storey, No. 11 Court street," at the bottom of it. I did that at his request, that word might be sent up to that address whether Mr. Folger would take the risk or not. When the application was first left the rate of premium was 3 per cent. It has since been altered to 3 1-2.

To the fourth he says: The said application was left with me to show to Mr. Folger, and I laid it in his desk when he came in. I can't now recollect whether I put these words on when Mr. Storey *first* called, or whether he called twice during Mr. Folger's absence, and I put on the words at his second visit.

To the fifth he says: I don't recollect about that.

To the sixth he says: I don't recollect that certainly, but I think he did carry it away.

To the seventh he says: The office of the defendants was not open on that day for business, in consequence of Christmas being celebrated on that day, in place of Sunday, which was the 25th. I was not there that day, nor any of the clerks or officers, to my knowledge.

To the eighth he says: It was observed as a holiday generally; the banks were closed, but I don't recollect how that was in regard to the stores and other places of business.

To the ninth he says: It was my duty to receive the applications of risks taken and fill out the policies thereon: I received all such applications and made out all the policies.

To the tenth he says: In a certain draw in Mr. Folger's desk were several partitions, and all the accepted applications were put into a particular portion of this draw; this was invariably the case. Every morning I went to this draw and took out from that portion of the draw all these accepted applications.

To the eleventh he says: After the policies were made out, I handed them to the president and secretary for their signatures, after which they were returned to me; they were delivered by me to the assured when the premium notes were received.

To the twelfth he says: It never came into my hands as an accepted application; it was not found by me among the said file of accepted applications at any time.

To the thirteenth he says: I know nothing further.

To the first cross-interrogatory he says: It was not issued, and I don't know whether it would have been.

N. PORTER CLEAVES.

Witness' fee, $1 50
Com. " 5 00

$6 50

UNITED STATES OF AMERICA,
District of Massachusetts.

On the twenty-fifth and twenty-eighth days of May. A. D., 1855, before me, a commissioner of the United States Circuit Court for the above district to take affidavits and bail, personally appeared George H. Folger and N. Porter Cleaves, the witnesses named in the annexed commission, and each of said witnesses was by me carefully examined and cautioned and sworn to testify the whole truth, and he did therefore, seperate and apart from all other persons, give his foregoing deposition in answer to the interrogatories to him addressed, and the same was by me reduced to writing, and was thereafter subscribed by the witnesses in my presence; and in all particulars in taking said depositions, I conformed to the directions in said commission contained.

C. P. CURTIS, Jr.,
U. S. Commissioner to take affidavits and bail.

UNITED STATES OF AMERICA,
Mass. Dist., ss:

I, Henry W. Fuller, clerk of the Circuit Court of the United States, Massachusetts district, do hereby certify that the foregoing is a true copy of the evidence in the cause of the Union Mutual Ins. Company, versus the Commercial Mutual Marine Ins. Co. filed in this Court, and used at the trial thereof.

In testimony whereof, I have hereunto subscribed my name, and set the seal of this Court, this twenty-seventh day of [L. S.] November, A. D. one thousand eight hundred and fifty-five, at Boston aforesaid.

H. W. FULLER,
Clerk.